SUE ANN SALMON EVANS, State Bar No. 151562
sevans@mbdlaw.com
AMY R. LEVINE, State Bar No. 160743
alevine@mbdlaw.com
SARAH L. W. SUTHERLAND, State Bar No. 239889
ssutherland@mbdlaw.com
MILLER BROWN & DANNIS
750 B Street, Suite 2310
San Diego, CA 92101
Telephone: (619) 595-0202
Facsimile: (619) 702-6202

Attorneys for San Diego Unified School District

MILLER BROWN & DANNIS
SYMPHONY TOWERS
750 B STREET, SUITE 2310
SAN DIEGO, CA 92101

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Tyler Brenneise, Allison Brenneise and Robert Brenneise, Plaintiffs, v. San Diego Unified School District, Defendant.	Case No. 08 CV 0028 WQH WMc **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DISTRICT'S MOTION TO CONSOLIDATE [FRCP Rule 42(a)]** **Trial:** **none set**

I. INTRODUCTION

The San Diego Unified School District ("District") hereby moves to consolidate the above captioned case with *San Diego Unified School District v. T.B. et al.,* Case No. 08 CV 0039, both of which are currently pending before this Court and the Honorable Judge Hayes, based upon the Notice of Motion, this Memorandum of Points and Authorities in support of that motion, and the attached Declaration of Sarah Sutherland.

II. MOTION TO CONSOLIDATE

San Diego Unified School District v. T.B. et. al., Case No. 08 CV 0039, should be consolidated with *Tyler Brenneise et. al. v. San Diego Unified School District*, Case No. 08 CV 0028, because the actions involve common questions of law and fact, and consolidation would avoid the substantial danger of inconsistent adjudications involving the same parties and issues, avoid unnecessary duplication of effort by the parties and the Court, and prevent the presentation of duplicative evidence and argument. Fed.R.Civ.Pro. Rule 42(a); Declaration of S. Sutherland; see also generally, *United States EPA v. City of Green Forest, Ark.*, 921 F.2d 1394, 1402 (8th Cir. 1990) (grant or denial of motion to consolidate is in trial court's discretion and will not be reversed absent clear error or exigent circumstances).

The cases should be consolidated because both cases involve the same parties and are based on the same or similar claims and events. Both parties seek review of the same underlying administrative proceeding, convened pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. sections 1400 *et seq.*, and adjudication of rights under the IDEA, including both parties' rights to fees incurred in the underlying due process hearing. More specifically, both cases pertain to the same student, same family, same school district, same school year, same counsel, and same offers of a free, appropriate public education. Thus, in furtherance of judicial economy and due process, the Court should consolidate both cases.

III. CONCLUSION

On this basis, the District respectfully requests this Court consolidate its action, 08 CV 0039, with T.B.'s first filed pending action, 08 CV 0028, such that the issues will be litigated and decided concurrently.

DATED: February 26, 2008

MILLER BROWN & DANNIS

By: /s/ Sarah L.W. Sutherland
SARAH L. W. SUTHERLAND
Attorneys for San Diego Unified School District

MILLER BROWN & DANNIS
SYMPHONY TOWERS
750 B STREET, SUITE 2310
SAN DIEGO, CA 92101

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is: Symphony Towers, 750 B Street, Suite 2310, San Diego, CA 92101.

On the date set forth below I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DISTRICT'S MOTION TO CONSOLIDATE [FRCP Rule 42(a)] on plaintiffs by serving their counsel of record electronically, having verified on the court's CM/ECF website that such counsel is currently on the list to receive emails for this case, and that there are no attorneys on the manual notice list.

Dated: February 26, 2008

Janice Karr

Miller Brown & Dannis
Symphony Towers
750 B Street, Suite 2310
San Diego, CA 92101